IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1093 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant
Versus
PRAKASHBHAI MOHANBHAI SHAH & 2 - Respondents

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Appearance :
MR. M.A. PATEL, LD. APP for Appellant:
MR DK MODI for Respondents: 1 - 3.
MR MD MODI for Respondents: 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 15/11/2006

ORAL JUDGMENT

1. Heard Shri. M.A. Patel, learned APP for the appellant State and Shri. D.K. Modi, learned counsel for the respondents / original accused.

2. The appellant State of Gujarat has preferred this appeal under Section 378 of Criminal Procedure Code, 1973 (hereinafter referred to as “Code” for brevity) challenging the judgment & order of acquittal dated 31/8/1998, passed by learned Jt. JMFC, Umreth in Criminal Case No. 575 of 1995, acquitting the accused of the charge of committing offence punishable under section 16 of the Prevention of Food Adulteration Act, 1954 (Hereinafter referred to as “PFA Act” for short). This Court (Coram: A.L. Dave, J) had admitted the appeal vide order dated 1/7/1999 and now the appeal is taken up for final disposal.

3. The case of the appellant in brief deserve to be set out as under.

3.1 The original complainant Food Inspector while discharging his duty as such visited grain & grocery shop of the accused no.1 on 10/2/1995 at 11.45 hrs at Umreth, the then taluka Anand with his helper. In presence of one panch witness the complainant purchased 400 grams of groundnut oil on payment of Rs.16-80 from the tin of 'Madhur brand' edible filtered groundnut oil produced by Yogesh industries, the producer whereof is accused no.3. The requisite notice under Rule 12 in form no. 6 was issued, office copy whereof is produced at exhibit-37. Cash memo was obtained and the receipt was also

obtained bearing signature of the panch witness and the vendor which is produced at exhibit-38 and 39 respectively. The sample groundnut oil was collected in three clean glass bottles in equal proportion and the bottles were closed with wooden cork and sealed in accordance with law. The requisite label containing serial number etc. was affixed on the bottles. The entire procedure of collecting sample and sealing the same was done in presence of panch and the panchnama was drawn. Accused no.1 had given copy of the bill of M/s. Shah Nareshbhai Jivabhai, i.e. accused no.2 under which bill he had purchased said tin of oil on 4/2/1995. Copy of the bill is produced at exhibit-41. The oil tin was packed with seal which was affixed on the mouth of the tin which is commonly known in vernacular to be “press tikdi” . That seal was also recovered and produced before the court which is produced at exhibit-43. After completing formalities and preparing memorandum etc. one sample bottle out of the three was sent to Public Analysis at Rajkot on 10/2/1995, with covering letter, that is produced at exhibit-44. Remaining two bottles of sample were duly sealed and packed and sent to the Local Health Authority. The letter of intimation of sending sample for analysis at Rajkot is at exhibit-44. Acknowledgment receipt showing that Public Analyst had received sample is at exhibit-46. Local Health Authority has issued receipt of

having received the sample which is at exhibit-47. Specimen copy of the seal and copy of memorandum are at exhibit-48 and 49 respectively. As the sample was not conforming to the standards and provisions laid down under the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as “PFA Rules”) hence it was stated to be adulterated. The report of Public Analyst dated 20/3/1995 is at exhibit-58. Details of sample is at exhibit-59. The report of Public Analyst with details of sample etc. were forwarded to the concerned complainant for taking appropriate steps, who in turn placed the same before the Local Health Authority. The charge of the post of Local Health Authority was held by Sr. Food Inspector. The sanction was accorded vide sanction letter dated 12/6/1995 which is at exhibit-73. After obtaining sanction complaint came to be filed which came to be registered as Criminal case No. 575 of 1995. The accused no.1 was the vendor, accused no.2 was distributor and accused no.3 was nominee of the producer. After recording plea of denial the trial commenced. Evidences came to be recorded. The accused denied the case of the prosecution in toto in their further statement. After analysing material on record, the trial court has come to the conclusion that the prosecution has not brought home guilt on the part of the accused and therefore, acquitted all the accused vide impugned judgment and order of acquittal

dated 31/8/1998. Same is subject matter of challenge before this Court in this appeal.

4. Shri. Patel, learned APP appearing for appellant State has submitted that the judgment and order of acquittal of the trial court being erroneous, deserve to be quashed and set aside. Shri. Patel has submitted that the trial court has recorded acquittal only on account of non compliance with mandatory provision of Rule 14 and on account of defective sanction. The trial court has not appreciated evidence on record and therefore, judgment and order of acquittal deserve to be quashed and set aside. Shri. Patel has submitted that original complainant food inspector has stated in his examination in chief that the subject sample of groundnut oil was collected in dried, odorless, clean glass bottles. Despite this testimony of the complainant food inspector the trial court has come to erroneous conclusion that there was non compliance with mandatory provision of Rule 14 of the PFA Rules and therefore the judgment is erroneous and the same deserves to be quashed and set aside. Shri. Patel has also submitted that in sanction letter exhibit-73 nowhere it is stated that it was issued by “Incharge”. Therefore Shri. Patel submits that even a cursory glance at the sanction letter dated exhibit-73 would show that it was issued by Local Health Authority under the power conferred

upon him vide notification dated 10/8/1987. In light of this, the admission of the concerned food inspector that at the relevant time he was only holding the charge of the post of Local Health Authority ought not to have weighed with the trial court in coming to the conclusion that the sanction stood vitiated. Shri. Patel has submitted that when an officer who is holding charge of an office is supposed to discharge all the functions which are normally discharged and carried out by the regular appointee and therefore, on this count sanction in question can not be said to have been vitiated as it was issued by the person who was merely holding charge of the post of Local Health Authority.

5. Shri. Patel learned APP submits that in view of the Central Food Laboratory's report when the subject sample oil was unequivocally declared to be adulterated the order of acquittal deserves to be quashed and set aside and the accused deserved to be convicted and appropriate punishment deserved to be imposed upon them.

6. Shri. Modi, learned counsel appearing for the respondents / original accused has submitted that, this being acquittal appeal the order of acquittal impugned in this appeal deserves to be sustained unless & until it is demonstrated by the appellant that trial court's findings are so perverse so as to result into miscarriage of

justice. In the instant case it can be said that the trial court has taken into consideration the relevant position of law laid down by this Court in respect of validity of sanction under section 20 of the PFA Act. This judgment and order of acquittal deserved to be sustained on two counts, namely (1) the sanction at exhibit-73 was issued by an officer who was merely holding charge of the post of Local Health Authority and; (2) due to non compliance with mandatory provision of Rule 14 of the PFA Rules.

7. Shri. Modi has invited this Court's attention to exhibit-73 where the sanctioning authority has stated his name i.e. Shri. D.T. Brahmbhatt. It is not stated in the entire letter of sanction that he was incharge, however, the admission of complainant in his cross examination that Shri. D.T. Brahmbhatt who had issued sanction letter at exhibit-73 was not regularly appointed Local Health Authority and was merely holding charge of the post can not be ignored. Shri. Modi has further submitted that the complainant food inspector in unequivocal terms admitted in his testimony at exhibit-35 in para-32 that said Shri. D.T. Brahmbhatt was regularly appointed as Senior Drug Inspector and it is true that the post of local Health Authority and Assistant Commissioner is a permanent post and as it was vacant at the relevant time Sr. Drug Inspector Shri. D.T.

Brahmbhatt was holding the charge of the said post. Shri. Modi has submitted that the prosecution has not cared to examine Local Health Authority, the officer who had issued sanction letter at exhibit-73. Shri. Modi has submitted that when the post of sanctioning authority is vacant and sanction came to be accorded by an officer - incharge then the same is not treated to be valid and proper. Shri. Modi has relied upon decision of this Court in case of STATE OF GUJARAT Vs. DHIRAJLAL AMRATLAL KANSARA & ANR, REPORTED IN 1975 GLR pg. 982, in support of his submission that person incharge of the post of sanctioning authority can not sanction prosecution. Shri. Modi has also relied upon another unreported decision of this Court in Criminal appeal No. 471 of 1989 decided on 24/7/1996 in support of his submission that it was bounden duty cast upon the prosecution to produce the notification appointing Shri. Brahmbhatt to be Local Health Authority who in fact has issued sanction. In absence of any notification, findings of vitiation of sanction can not be assailed in the appeal. He has also relied upon an unreported decision of this Cort in case of State of Gujarat Vs. Kantilal Vashram and another, in Criminal Appeal No. 317 of 1991 (Coram: J.R. Vora, J) decided on 15/2/2000, wherein also this Court in para-9 has observed as under:

" 9. Now, so far as sanction to prosecute is concerned, the same is given by one Mr. M.S.M. Kadara, Incharge or Acting Assistant Director, Food and Drugs Control Administration, Junagadh Circle. Vide Notification dated 10th May, 1982, the State Government appointed authorities including the Assistant Director, Food & Drugs Control Administration, Junagadh Circle to initiate prosecution under the provisions of the Prevention of Food Adulteration Act. While perusing Exh. 11, it is clear that consenting authority Mr. M.S.M. Kadara has designated himself as Incharge or as Acting Assistant Director, Food and Drugs Control Administration, Junagadh Circle. Now, in this background of facts, the question of law emerges for the determination that whether a sanction to prosecute is accorded by an authority, who is acting or incharge, would be really a sanction, as envisaged by Section 20(1) of the Prevention of Food Adulteration Act. This Court in the mater of STATE OF GUJARAT Vs. DHIRAJLAL AMRATLAL KANSARA, reported in 1975 (16) GLR 982 reiterated that the statutory duty must be performed by a duly designated officer of a certain rank, person temporarily performing the duties of the rank cannot be placed at par with the persons designated statutory. In this particular case, the complaint was required to be filed by the Chief Officer under the Gujarat Municipalities Act and the complaint was filed

by person temporarily holding the charge of Chief Officer and in those circumstances, this court held that Incharge Chief Officer can not himself sanction or file the complaint. Therefore, according to the above said Notification dated 10th May, 1982, only the Assistant Director, Food & Drugs Control Administration, Junagadh Circle was authorised by the State Government to initiate and consent the prosecutions in the local area in the District of Junagadh and Amreli, under section 20 (1) of the Prevention of Food Adulteration Act. Section -19 of the General Clauses Act has been applied by this court in State of Gujarat v. Dhirajlal Amratlal (supra), this will not include an Incharge or Acting Director. Any authority accords sanction to initiate proceedings, must be a person appointed by the competent authority to that particular rank or designation. Prosecution in this case has failed to prove that Mr. Kadara was appointed by the competent authority as Assistant Director, Food and Drugs Control Administration, Junagadh Circle. Instead, by Exh. 41 it is clearly laid down that he was merely an Incharge or an Acting Assistant Director, Food and Drugs Control Administration, Junagadh Circle. This is clear breach of Sec. 20 (1) of the Prevention of Food Adulteration Act. Therefore, this is a case where no sanction to prosecute has been accorded in accordance with section 20(1) of the

Prevention of Food Adulteration Act and, therefore, the prosecution against all the accused including the present respondents is bad in law. “

8. Shri. Modi has also submitted that the prosecution has not established beyond reasonable doubt due compliance with provision of Rule 14 which are mandatory in nature. Shri. Modi has submitted that looking to the record it can be said that there is no positive evidence coming forth on the aspect of compliance with mandatory provision of Rule 14. The prosecution has not led any positive evidence to show and establish beyond doubt that the food inspector and or his helper while collecting sample had followed and complied with mandatory provision of Rule 14. Shri. Modi has submitted that mere statement in his examination-in-chief that clean bottles were used in itself would not be sufficient to establish that mandatory provisions of Rule 14 have been complied with. Therefore, Shri. Modi submitted that even on this count the order impugned deserves to be sustained.

9. This Court has perused the documents on record and heard learned counsels at length. The order impugned deserves to be sustained on the count that the sanction was not valid and the complaint was not maintainable in view of the

mandatory provisions of section 20(1) of the PFA Act. The fact remains that the sanctioning authority Shri. D.T. Brahmbhatt who has issued the sanction, though he has not mentioned in the sanction letter at exhibit-73 that he was incharge, was not regularly appointed Local Health Authority nor was he conferred with any such specific powers. It has come out unequivocally in testimony of the food inspector which came to be recorded in exhibit-35 in para-32 that said Shri. D.T. Brahmbhatt was working as Sr. Drugs Inspector and as the post of Local Health Authority & Assistant Commissioner was vacant, said Sr. Drugs Inspector was holding charge of that post. This admission on the part of the food inspector / original complainant had remain uncontroverted and unchallenged throughout. In absence of any notification showing Shri. D.T. Brahmbhatt to be appointed as Assistant Commissioner & Local Health Authority and or vesting him with powers to grant sanction to prosecute, and omission on the part of the prosecution in examining said Shri. D.T. Brahmbhatt, the contention that said Shri. D.T. Brahmbhatt was holding charge of the post of Local Health Authority and that as such he did not have power to grant sanction to prosecute, deserved to be accepted. When the said Shri. Brahmbhatt was merely holding charge of the post and he was not regularly appointed Local Health Authority, sanction issued by him can not be

said to be valid sanction in light of rulings of this Court cited herein above. This Court time and again has held that the incharge officer can not sanction lodging of prosecution. Shri. Patel, learned APP could not show any contrary ruling or decision either of this court or Apex Court. This Court therefore is of the view that the sanction at exhibit-73 was vitiated and the findings recorded of the trial court on this point can not be said to be erroneous requiring any interference.

10. The findings on the point of failure on the part of prosecution in establishing beyond doubt compliance of mandatory provision of Rule 14 also deserve to be sustained. The entire record is perused by the Court and this Court is also of the view that food inspector has merely stated in his deposition that clean, dried and odorless glass bottles were used for collecting sample oil. Except this deposition, no other evidence nor any positive statement that the bottles were cleaned by himself or bottles were caused to be cleaned in his presence have come on record. This Court has time and again held that such a statement in itself would not amount to proving due compliance with provisions of Rule 14 of the PFA Rules. This Court has held in unreported judgment being Criminal Appeal No. 249 of 2000 (Coram: H.H. Mehta, J) decided on 21/3/2001 in case of State of Gujarat Vs.

Gulamnabi Mahmadbhai Vohra that ' duty is cast upon the prosecution not only to comply with the mandatory provision of law by using clean and dry bottles for storing the sample but also to satisfy the court by leading evidence that the bottles used were clean and dry“. Said judgment refers to another reported judgment of this Court in case of State of Gujarat Vs. Bhupendra M. Mehta, reported in 1999 (1) GLH, 227.

11. In view of the aforesaid discussions, this Court is of the view that the judgment & order of acquittal dated 31/8/1998 passed by learned Jt. JMFC, Umreth in Criminal Case No. 575 of 1995 does not call for any interference. The appeal therefore deserves to be dismissed and is accordingly dismissed. Bail bond, if any, shall stand cancelled.

[S.R. BRAHMBHATT, J]

/vgn